

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

NICOLE M. HERR as guardian for )  
WALLACE H. HERR, an incapacitated )  
and disabled person, )

Case No.: 4:17-CV-02716-JAR

WALLACE H. HERR, and )

NICOLE M. HERR, )

Plaintiffs, )

vs. )

ERIC HARR, and )

TERRY HARR, )

Defendants. )

**PLAINTIFFS' MOTION FOR ORDER**

**SETTING ASIDE SETTLEMENT AND RELEASE**

COMES NOW, Plaintiffs, through counsel, and state as follows for their  
Motion for Order setting aside the settlement and release:

1. On July 17, 2018, Plaintiffs caused the deposition of Terry Harr.
2. Under oath and on the record, Terry Harr explained that Wallace Herr himself withdrew the money from his account at First Community in cashier's checks made out to himself and Terry Harr and Wallace took those checks himself

and put them in a safe and then took them out of the safe a month later. (Ex. 1; Deposition Terry Harr pp. 17-23).

3. The cashier's checks at issue were withdrawn from the First Community account on February 21, 2017 in the South St. Louis County branch and the account was closed on that date including one check for \$6,134.00. (Ex. 2).

4. On February 21, 2017, Terry Harr dropped Wallace Horr off at the Big River Nursing home in South St. Louis County at 11:50 a.m. (Ex. 3; See also Ex. 1; Dep. Terry Harr p. 6 "I've been called Bob all my life.").

5. On August 21, 2018, Plaintiffs caused a subpoena to be served on U.S. Bank for records related to the aforementioned cashier's checks. (Ex. 4; U.S. Bank ROS).

6. On August 1, 2018, this Court ordered the parties to submit to alternative dispute resolution and to make a good faith attempt to resolve the case.

7. Pursuant to the Court's order, the parties submitted to ADR on September 4, 2018.

8. Permeating the case and settlement discussions was the difficulty in proving the actions and intentions of Wallace Horr when he may not be a competent witness. In large part because of that and the inability to refute Terry Harr's representations that he handed the money to Wallace Horr who would not be allowed to testify to the contrary, the case settled for a fraction of its value.

9. Following the ADR, the parties executed the settlement and release documents on September 28, 2018.

10. Subsequently, Plaintiffs received U.S. Bank's response to Plaintiff's subpoena which showed Terry Harr deposited the \$6,134.00 cashier's check into his account at U.S. Bank on February 22, 2017 (Ex. 5), Terry Harr cashed a \$5,000.00 cashier's check on April 25, 2017 (Ex. 6), Terry Harr cashed another \$5,000.00 cashier's check on May 1, 2017 (Ex. 7).

11. As Wallace Horr was in the nursing home we would have some record of him leaving to deposit checks.

12. Terry Harr's testimony under oath and on the record was false and deliberately intended to hide the truth of the material fact of where some \$21,000.00 in cashier's checks went. As he was the only person competent to testify to what Wallace Horr did with those cashier's checks, Plaintiffs had to rely on his statements at the time of the Court ordered ADR and subsequent release to their detriment.

13. The settlement and release were therefore obtained by fraud and should be set aside and this case allowed to proceed to trial.

ACCORDINGLY, Plaintiffs respectfully request that this Honorable Court set aside the settlement and release in this case, and permit it to proceed directly to

trial and for all such other relief as this Court deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED:  
DALE FUNK AND ASSOCIATES, LLC

BY: /s/ Dale R. Funk  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served on all parties of record using this Court's electronic filing system and by depositing a copy of same in the U.S. Mail postage prepaid on this 19th day of October, 2018 and addressed to the following:

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